

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Wilbert H. McGaw, TTEE McGaw Family Trust and McGaw Family Residual Trust, Claimant v.
Prudential Securities, Inc. and David Sear, Respondents

Case Number: 03-05356

Hearing Site: San Diego, California

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

R. Craig Zafis, Esq.
R. Craig Zafis, APC
San Diego, California

For Respondents:

Stephen Young, Esq.
Bentley P. Stansbury, III, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: July 16, 2003

Amended Statement of Claim filed: August 17, 2004

Claimant's Uniform Submission Agreement signed: July 15, 2003

Joint Statement of Answer to Statement of Claim filed by Respondents: October 10, 2003

Joint Response to Amended Statement of Claim filed by Respondents: March 7, 2005

Respondent Prudential Securities, Inc.'s Uniform Submission Agreement signed:
September 24, 2003

Respondent David Sear's Uniform Submission Agreement signed: October 23, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, fraud and deceit, violation of California Unfair Business Practices Act, negligent misrepresentation, professional negligence as Investment Advisor, and professional negligence as Supervisor. The dispute involved the purchase and/or sale of General Electric stock.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of not less than \$133,956.00, pre-award and post-award interest, exemplary damages in an amount of two times the loss of value in Claimant's capital, an order enjoining Respondents from engaging in the conduct alleged in the claims, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety and costs. Additionally, Respondent David Sear requested that any reference to this matter be expunged from his records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On August 21, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 10, 2003, NASD Dispute Resolution received Respondents' counsel signed Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 17, 2004, Claimant filed a Request for Leave to File an Amended Statement of Claim and Amended Statement of Claim. On September 10, 2004, the Panel granted Claimant's Request for Leave to File an Amended Statement of Claim. On March 7, 2005, Respondents filed a response to Claimant's Amended Statement of Claim.

On March 14, 2005, NASD Dispute Resolution received notice that Claimant dismissed Respondent David Sear.

On March 23, 2005, NASD Dispute Resolution received notice that this matter settled in its entirety.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the Parties' request for Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) After considering Respondents Stipulated Award and request for the Expungement, the Panel grants the Stipulated Award dismissing Respondents.
- 2) Respondents Prudential Securities Inc. and David Sear are dismissed.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Sear's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent David Sear must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Prudential Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, May 6-7, 2004 adjournment requested by Claimant	= \$ Waived
Hearing Dates, January 5-6, 2005 adjournment requested by Respondents	= \$ Waived

Three-Day Cancellation Fees

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of March 24-25, 2005 hearings dates:	= \$ 300.00
---	-------------

1. The Panel assessed \$150.00 of the three-day cancellation fee to Claimant.
2. The Panel assessed \$150.00 of the three-day cancellation fee to Respondent Prudential Securities, Inc.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences:	
January 6, 2004	1 session
January 7, 2004	1 session
April 15, 2004	1 session

Total Forum Fees	= \$ 3,375.00
-------------------------	----------------------

1. The Panel assessed \$2,812.50 of the forum fees to Claimant.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
<u>Three-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 3,262.50
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,837.50

2. Respondent Prudential Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 5,350.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

3. Respondents Prudential Securities, Inc. and David Sear are charged jointly and severally with the following fees and costs:


<u>Forum Fees</u>	<u>= \$ 562.50</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jon C. Milliken	-	Public Arbitrator, Presiding Chair
Charles E. Riggs	-	Public Arbitrator
James A. Bush	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jon C. Milliken
Chair, Public Arbitrator

4/25/2005
Signature Date

Charles E. Riggs
Public Arbitrator

Signature Date

James A. Bush
Non-Public Arbitrator

Signature Date

7/06/05
Date of Service

ARBITRATION PANEL

Jon C. Milliken	-	Public Arbitrator, Presiding Chair
Charles E. Riggs	-	Public Arbitrator
James A. Bush	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jon C. Milliken
Chair, Public Arbitrator

Signature Date


Charles E. Riggs
Public Arbitrator

4-21-05

Signature Date

James A. Bush
Non-Public Arbitrator

Signature Date

7/06/05

Date of Service

ARBITRATION PANEL

Jon C. Milliken	-	Public Arbitrator, Presiding Chair
Charles E. Riggs	-	Public Arbitrator
James A. Bush	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jon C. Milliken
Chair, Public Arbitrator

Signature Date

Charles E. Riggs
Public Arbitrator

Signature Date



James A. Bush
Non-Public Arbitrator

7/5/05
Signature Date

7/06/05
Date of Service